IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.885 OF 2006
IN
CRIMINAL APPEAL NO.1326 OF 2004

Shamim Arif Mirza Baig @ Mrs.Paul .... Applicant

V/s.

The State of Maharashtra .... Respondent

Shri.M.S. Mohite Adv. for the applicant.
Smt.M.M. Deshmukh APP for the State.

CORAM : V.M. KANADE, J.
DATED : 17/10/06

P.C.:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This is a second application for bail filed by the applicant. She has been convicted by the Special Court for the offences punishable under Section 3(2) of the M.C.O.C. Act r/w 120-B of the I.P.C, Section 3(5) of the M.C.O.C. Act r/w 120-B of the I.P.C and Section 4 of the M.C.O.C. Act and sentenced to suffer R.I. for five years, five years and three years on each count and fine is imposed of Rs.5 lacs and in default to undergo imprisonment for one year, fine of Rs.2 lacs

and in default to undergo imprisonment for one year, and fine of Rs.1 lac and in default to undergo imprisonment for six months respectively.

3. Against said judgment and order passed by the Special Court, the applicant preferred an appeal being appeal No.1326/2004 which was admitted on 01/11/2004 and appeal is pending in this Court. Alongwith criminal appeal, the applicant has filed application for bail. This Court by a reasoned order dated 03/12/2004 had granted bail to the applicant. However, the applicant was directed to pay the amount of fine as condition precedent for grant of bail. Against the said order, the applicant preferred SLP in the Hon'ble Supreme Court. However, the Supreme Court dismissed SLP summarily.

4. The learned counsel appearing on behalf of the applicant submitted that the applicant could not arrange the fine of Rs.8 lacs and as a result, she remained in jail even after the order of bail was granted by this Court. It is submitted that the applicant is in jail since 20/3/2002 and has undergone 4 years 6 months and 22 days of actual sentence. It is submitted that total sentence which the applicant is

supposed to undergo is 5 years and out of that, she has already undergone 4 years 6 months and 22 days. It is submitted that if the remissions which the applicant is entitled to get for good behaviour are considered, approximately she would be entitled for remissions to the extent of 6 months and 22 days. It is submitted that therefore, the applicant has undergone 5 years and 1 month and has completed her sentence. It is submitted that however, since fine of Rs.8 lacs is not paid, the applicant would have to undergo 2 and ½ years in default of payment of fine. It is submitted that the applicant has now managed to collect amount of Rs.4 lacs and it is not possible for her to collect remaining amount. It is submitted that even if the fine amount had not been paid by the applicant, she would have to undergo 2 and ½ years for further detention. Since, the applicant is making payment of Rs.4 lacs, 1 year and 3 months would be deducted out of 2 and ½ years. It is submitted that the appeal is not likely to come up for hearing for quite some time. It is further prayed that the applicant may be released on bail for payment of Rs.4 lacs towards the fine out of Rs.8 lacs which has been imposed by the Trial Court.

5. On the other hand learned APP for the State submitted that the order passed by this Court was confirmed by the Supreme Court and therefore, this application filed by the applicant is liable to be dismissed.

6. Taking into consideration the peculiar facts and circumstances of the case the applicant is entitled to be released on bail on payment of Rs.4 lacs towards the fine amount out of total 8 lacs which has been imposed by Trial Court. Earlier bail was granted by this Court by order dated 03/12/2004. However, exemption was not granted to the applicant for paying amount of fine during the pendency of appeal. Since, the applicant could not pay the amount of fine, she remained in jail for 2 years 8 months 13 days and could not avail of the bail favoured by the Court. SLP against this order was dismissed by the Supreme Court. Merely because SLP was dismissed by the Supreme Court that would not be a ground for rejecting subsequent applications for bail which are filed by the detainee as the applicant has every right to file successive application for bail.

7. Considering the change in the circumstances and facts that the applicant has practically undergone entire sentence, therefore, in my view, the applicant deserves to be released on bail. Therefore, application for bail is allowed.

8. The applicant be released on bail in the sum of Rs.10,000/- with one or two sureties in the like amount. The applicant shall report to DCBCID, Unit I twice in a month between 11.00 a.m. to 5.00 p.m.

9. The applicant shall further deposit fine amount of Rs.4 lacs in the Trial Court out of total fine amount Rs.8 lacs. On such deposit being made, the applicant shall be released forthwith on bail in the sum as stated herein above.

10. The application is accordingly disposed of in above terms.

V.M. KANADE J.